

415
LABOUR DEPARTMENT

The 14th January, 1986

No. 9/5/84-6 Lab./10939.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the Workman and the management of M/s. Organo Chemical Industries, M-3, Industrial Area, Sonepat.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT,
ROHTAK

Reference No. 137 of 1984.

between

SHRI RAM RAJ, WORKMAN AND THE MANAGEMENT OF M/S. ORGANO CHEMICAL INDUSTRIES, M-3, INDUSTRIAL AREA, SONEPAT

Shri R. S. Lakha, A.R., for the workman.
Shri D. C. Gandhi, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Ram Raj to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. 29336-41, dated 8th August, 1984:—

Whether the termination of services of Shri Ram Raj is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent as a pressman on monthly wages of Rs. 354 for the last about five years and that the respondent choose to terminate his services unlawfully on 14th March, 1984, without any prior notice or payment of any retrenchment compensation as envisaged under section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. In the reply filed by the respondent, preliminary objection taken is that the reference is bad in law, because the petitioner resigned from his service of his own on 20th

April, 1984, and has taken his dues and so, there is no question of termination of services of the petitioner as alleged. *Inter alia* it is alleged that because of power cut the respondent was constrained to transfer the petitioner to some other sister concern, at which, the petitioner resigned of his own.

4. On the pleadings of the parties, the following issue was framed on 30th November, 1984:—

Whether the termination of services of Shri Ram Raj is justified and in order? If not, to what relief is he entitled?

5. The management examined MW-1 Shri Bal Kishan, Manager and MW-2 Shri Vijay Thukral, Accounts Assistant. The workman appeared as his own witness as WW-1.

6. Learned Authorised Representatives of the parties heard.

7. The learned Authorised Representative of the respondent Shri Gandhi contended that since there was no termination of services of the workman and as such, the present dispute is not covered under section 2-A of the said Act and as such, the reference is bad in law. In that behalf, he has drawn my attention to the statement of MW-2 Shri Vijay Thukral, Accounts Assistant of the respondent concern, who stated that the petitioner resigned of his own on 20th April, 1984 and that he signed the resignation letter Ex. MW-1/1 of his own in his presence and that a sum of Rs. 988.85 were paid to the workman on account of his dues, which included a sum of Rs. 402.10 on account of bonus, Rs. 264.10 *ex-gratia* payment Rs. 145.50 wages in lieu of earned leave and a sum of Rs. 70.25 on account of remaining wages. Vouchers signed in that behalf by the workman is Ex. MW-1/2. On this fact his statement has been corroborated by Shri Bal Kishan, Manager MW-1. The workman when he appeared as WW-1 denied that he ever tendered his resignation. Now, the question would be as to whether this Court can go into the fact regarding the resignation of the workman being voluntary or the same was a forged one, when the terms of reference are limited to the extent as to whether services of the workman were terminated by the respondent. In that behalf, Shri Gandhi learned Authorised Representative of the management has drawn my attention to 1984 (ii) LLN 297 Sita Ram Vishnu Shirodkar & Administrator, Government of Goa and others, in which their Lordships of the Bombay High Court have

held that Labour Court or Tribunal cannot travel beyond the terms of reference and that in case a plea of abandonment is taken by the respondent, the Labour Court cannot go into that fact. In the present case also, a plea of resignation has been put forth by the respondent and the respondent had adduced evidence to buttress the same. In view of law laid down in this authority referred to above, this Court cannot go into the validity of otherwise of the resignation and as such, travel beyond the terms of reference. So, the present reference is bad in law. The reference is answered and returned accordingly with no order as to cost.

Dated the, 6th November, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.
Camp Court, Bahadurgarh.

Endorsement No. 137-84/1923, dated the
11th December, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.
Camp Court, Bahadurgarh.

No. 9/5/84-6 Lab./10940.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the Workman and the management of M/s. Hindustan Rolling and Wire Mills, Sonepat.

BEFORE SHRI B. P. JINDAL, PRESIDING
OFFICER, LABOUR COURT,
ROHTAK

Reference No. 32 of 80

between

SHRI SURESH KUMAR, WORKMAN AND
THE MANAGEMENT OF M/S. HINDU-
STAN ROLLING AND WIRE MILLS,
SONEPAT

Shri S. N. Solanki, A.R., for the workman.
Shri D. C. Gandhi, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the

Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Suresh Kumar and the management of M/s. Hindustan Rolling and Wire Mills, Sonepat, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. ID/SPT/3/80/8804, dated 19th February, 1980:—

Whether the termination of services of Shri Suresh Kumar was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent for the last about one year on monthly wages of Rs. 250/- as a Helper and that the respondent choose to terminate his services unlawfully on 22nd November, 1979, in flagrant disregard of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. In the reply filed by the respondent, preliminary objections taken are that the reference is bad in law on three counts; firstly, that the workman has not availed of the remedies provided under the Certified Standing Orders of the respondent concern; secondly, that the case of the workman is not covered under section 2A of the said Act, because services of the workman were never terminated or he was never discharged, dismissed or retrenched from employment; thirdly, that the workman lost his lien on the job of his own by remaining absent from duty without prior intimation for more than eight consecutive days and as such, the provisions of clause 21 of the Certified Standing Orders applicable upon the respondent are attracted. On merits also, reply runs on the same lines.

4. On the pleadings of the parties, the following issues were settled for decision on 16th October, 1980:—

(1) Whether the reference is bad in law as per the reason given in paras 1 to 3 of the preliminary objections of the written statement?

(2) Whether the termination of services of Shri Suresh Kumar was justified and in order? If not, to what relief is he entitled?

5. The workman appeared as his own witness as WW-1 and the management examined MW-1 Shri Gurbax Singh Bhalla, Senior Assistant.

6. Heard.

7. The learned Authorised Representative of the respondent rightly contended that the terms of reference in the present case are absolutely alien to the controversy in hand, which resolves round the fact as to whether the termination of services of the workman was justified or not. Now, the controversy before the Court is as to whether the workman has lost his lien on his job because of his absence from duty for more than eight consecutive days attracting the provisions of clause 21 of the Certified Standing Orders applicable upon the respondent and as such, the reference is bad in law and in support of his contention he cited 1984 II LLN 297 *Sita Ram Vishnu Shirodkar & Administrator, Government of Goa and others*. In this authority also the management took up the plea of abandonment of employment by the workman but the terms of reference to the Court were confined to the justifiability or otherwise of the order of termination. In that situation, their Lordships of the Hon'ble High Court of Bombay held that the Labour Court or Tribunal cannot travel beyond the terms of reference and in the present case factum of loss of lien on the job is not incidental or ancillary to the terms of reference, but absolutely alien to the same and as such, this Court cannot adjudicate upon the controversy, which was never referred to it for adjudication. An added plea taken on behalf of the respondent was that the petitioner has not completed even 240 days of actual work with the respondent, because as per statement of Shri G. S. Bhalla, MW-1 the petitioner has worked for only 177 days though he was paid wages for 223½ days. A passing reference has been made to this aspect of the controversy to prove that the workman is not entitled to any relief on the ground firstly that the reference is bad in law and secondly, since the workman has not actually worked for 240 days with the respondent, the provisions of section 25-F are not attracted in this case. Under these circumstances, the workman is not entitled to any relief. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 11th November, 1985.

B. P JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 32-80/1924, dated the

11th December, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment

Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P JINDAL,
Presidng Officer,
Labour Court, Rohtak.

No. 9/5/84-6 Lab./10941.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. National Textile Mills, M.I.F., Bahadurgarh.

BEFORE SHRI B. P. JINDAL, PRESIDING
OFFICER, LABOUR COURT,
ROHTAK.

Reference No. 110 of 84

between

SMT. SHANTI DEVI, PETITIONER AND THE
MANAGEMENT OF M/S. NATIONAL TEX-
TILE MILLS, M.I.F., BAHADURGARH.

Shri Suraj Bhan, A.R., for the petitioner.
Shri H. M. Kaushal, A.R., for the manage-
ment.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes, Act, 1947, the Governor of Haryana, referred the following dispute, between the petitioner Smt. Shanti Devi and the management of M/s. National Textile Mills, M.I.F., Bahadurgarh, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 24590-90, dated 13th July, 1984:—

Whether the termination of services of Smt. Shanti Devi was justified and in order? If not, to what relief is she entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that she was working with the respondent on the Reeling Machine for the last 10 years and was initially employed on wages of Rs. 110/- p.m. and on the date of termination her wages were Rs. 400/- p.m. and that the management terminated her services on 13th December, 1983, without any prior notice or payment of any retrenchment compensation and as such her termination was in gross violation of the provisions of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, preliminary objections taken are that the reference is bad in law because the present dispute does not fall within the ambit of section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Another ground taken is that as per subsisting settlement under section 12(3) of the said Act all disputes of the workman had to be referred to the Arbitrator and on the failure of the proceedings, their industrial dispute could be raised by the workman. On merits, it is alleged that the applicant finally settled her dues with the respondent on 6th May, 1981 and she was accordingly paid off. She again joined the respondent concern on 1st June, 1981 and worked upto 21st January, 1983 and, thereafter, absented from her duties with effect from 22nd January, 1983, and as per the Certified Standing Orders applicable to the respondent concern, her name could not be carried forward after 10 days of continuous absenteeism. It is further alleged that the petitioner reported to the respondent in the month of May, 1983, and submitted her resignation dated 19th May, 1983 and she was paid her all dues and the payment was made in the presence of the Labour Inspector, Bahadurgarh. It is also denied that she was being paid wages at the rate of Rs. 400/- p.m., but she was being paid piece rate basis. Additional pleas projected are that the respondent concern has since been closed on 31st March, 1984, and there is no possibility of the same being started again.

4. On the pleadings of the parties, the following issues were settled for decision by me on 12th October, 1984:—

- (1) Whether the claimant was an employee of the respondent?
- (2) Whether the termination of services of Smt. Shanti Devi was justified and in order? If not, to what relief is she entitled?

5. The petitioner appeared as WW-1 and the respondent examined MW-1 Shri Narender Kumar, MW-2 Shri Yashpal Chand Jain, MW-3 Shri Inderjit, Labour Inspector.

6. Learned Authorised Representatives of the parties heard.

7. At the very outset the learned Authorised Representative of the respondent Shri Kaushal contended that since the controversy in hand is beyond the terms of reference, this Court cannot adjudicate upon the same. In that behalf, he has made a reference to 1984 II-UN-I 297 Sita Ram

Vishnu Shirodkar and Administrator Government of Goa and others, 1979 Lab. I.C. 827-Pottery Mazdoor Panchayat versus The Perfect Pottery Co., Ltd., and another, 1981 Lab. I.C. 1110 Firestone Tyre and Rubber Co. of India (P) Ltd., versus The Workmen employed represented by Firestone Tyre Employees Union, 1985 Lab. I.C. 480, Rajasthan State Road Tpt Corp. and Others versus The Juuge Industrial Tribunal Rajasthan Jaipur and others. The clear cut stand of the respondent in the reply filed in the Court is that the petitioner abandoned her employment of her own subsequently tendered her resignation and accepted her dues on 19th May, 1983.

8. On the other hand Shri Suraj Bhan learned Authorised Representative of the workman has cited 1975 II LLJ 73 Kashibai Sachidanand and Messrs Hindustan Pencils Private Ltd., to support his plea that this Court can travel beyond the terms of reference also, because the term 'termination' is of the widest amplitude and can cover the plea of abandonment and resignation, if any taken by the management and that in the authority referred by him, the plea of abandonment was taken by the management because of prolonged absence from duty, which plea was accepted by the Labour Court. He also referred to 1969 II LLJ 799 between Tata Engineering and Locomotive Company Ltd. and S.C. Parshad and 1968-70 S.C. Labour Judgments page 489 between Workmen of the Calcutta Port Commissioners and employees in relation to the Calcutta Port Commissioner and another.

9. In my opinion, in the authorities referred on behalf of the petitioners, the controversy in question was never agitated but the facts of the Bombay High Court authority referred to on behalf of the respondent are on all fours to the facts of the present case. The question as to whether the petitioner abandoned her employment or she voluntarily resigned from the same, cannot be gone into by this Court, because these matters cannot be said to be incidental or ancillary to the terms of reference which are confined about the justifiability or otherwise of termination of the workman. So, there is no difficulty in holding that the controversy before the Court substantially spills beyond the terms of reference and the same is absolutely alien to the same and as such, this Court cannot adjudicate upon the same without a proper reference by the Government in that behalf and so, this reference is held to be bad in law and answered accordingly with no orders as to cost.

B. P. JINDAL.

Presiding Officer,
Labour Court, Rohtak.

Dated the 5th November, 1985.

419
 Endorsement No. 110-84/1925, dated the
 11th December, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
 Presidng Officer,
 Labour Court, Rohtak.

No. 9/5/84-6 Lab./10942.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. Bhiwani Textile Mills, Bhiwani:—

BEFORE SHRI B. P. JINDAL,
 PRESIDING OFFICER,
 LABOUR COURT, ROHTAK

Reference No. 8 of 83

between

SHRI KISHAN MURARI, WORKMAN AND
 THE MANAGEMENT OF M/S. BHIWANI
 TEXTILE MILLS, BHIWANI

Present:—

Shri Raghbir Singh, Authorised Representative for the workman.

Shri B. R. Ghaiye, Authorised Representative for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Kishan Murari and the management of M/s. Bhiwani Textile Mills, Bhiwani, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. ID/HSR/18-1-74/2557, dated 20th January, 1983:—

Whether the termination of service of Shri Kishan Murari was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties

appeared. The case of the workman is that he was an employee of the respondent, which, served upon him a charge-sheet, dated 29th January, 1972 and thereafter holding a farce of an enquiry ordering for his dismissal on 2nd February, 1972 on trumped up charges and that he raised a demand notice against the respondent, in which, conciliation proceedings followed but the request for reference to the Labour Court was rejected by the Government against which order he filed Writ Petition in the Hon'ble High Court of Punjab and Haryana, which was accepted and under these circumstances, this dispute is before the Labour Court for adjudication, in which, the workman has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the claim is vague because the petitioner was dismissed after a proper and valid domestic probe and the approval of the Industrial Tribunal was received regarding the order of dismissal passed against the petitioner. It is further asserted that the domestic enquiry against the petitioner was held according to the principles of natural justice and the procedure adopted by the Enquiry Officer has been held to be proper by the Industrial Tribunal in proceedings under section 33-2(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further alleged that the dismissal order was passed about ten years ago and the workman has remained gainfully employed throughout thereafter.

4. On the pleadings of the parties, the following issues were settled for decision on 16th August, 1984:—

- (1) Whether a proper and valid enquiry was held by the management ? OPR.
- (2) Whether the termination of service of Shri Kishan Murari was justified and in order ? If not, to what relief is he entitled ?

5. Both the parties were allowed to produce their evidence. The managament examined MW-1 Shri Shyam Lal, Factory Manager and the workman appeared as his own witness as WW-1.

6. Learned Authorised Representatives of the parties heard.

ISSUE NO. 1:

7. To prove the validity of the domestic enquiry the management examined Shri Shyam

Lal, Factory Manager, who stated that a petition under section 33-2(b) of the said Act, was moved before the learned Industrial Tribunal for approval of the dismissal order, because there were serious charges of misconduct against the workman regarding which charge-sheet, Exhibit M-1 was issued to him, to which, a reply, Exhibit M-2 was filed by the workman and Exhibit M-3 to M-25 are the copies of the correspondence which ensued between the workman on the one hand and the management and the Enquiry Officer on the other. Copies of the enquiry proceedings are Exhibit M-26 running into twenty pages. Copies of the enquiry report is Exhibit M-29 and M-30 is the order of dismissal passed against the workman. Exhibit M-31 is the copy of the order of the Industrial Tribunal according approval for dismissal of the workman after upholding the validity of the domestic probe. He further stated that the Enquiry Officer Shri B. N. Mishra is no longer in the employment of the respondent and his whereabouts are not known to the management. The workman when he appeared as WW-1 stated that he was in the employment of the respondent since the year 1962 and that a charge-sheet was issued to him, to which, he filed a reply and, thereafter, he was dismissed from service. He raised an industrial dispute but the Government of Haryana refused to refer the case for adjudication to the Labour Court against which order he filed Writ Petition in the High Court which was accepted and the dispute was referred to the Labour Court. He further stated that during the enquiry proceedings Shri Mehta was not examined and he was not allowed to cross-examine the witnesses produced by the management and the Enquiry Officer also did not record the statement of the witnesses he proposed to examine in defence.

8. Learned Authorised Representative of the workman Shri Raghbir Singh forcefully contended that the management is guilty of forging the statements of witnesses examined by it before the Enquiry Officer, because these were allegedly signed by Shri Dev Narain, representative of the workman but now, the statements which have been produced in the Court are not signed by Shri Dev Narain. In my opinion, this contention is devoid of any force, because in the enquiry proceedings records there is no mention that the statement of the witnesses examined were signed by Shri Dev Narain. There is a note at the fagend of the

statement of each witness that the workman was asked to sign the same but he refused to do so. Furthermore, had the management been guilty of forging any document, such a suggestion would have been put to Shri Shyam Lal, Factory Manager of the respondent concern but in that behalf, no suggestion was put to him when he appeared in the Court as MW-1. I have gone through the enquiry proceedings, Exhibit M-26. I have also gone through the report of the Enquiry Officer, copy of which is Exhibit M-29. Proceedings have been recorded in a systematic manner in which the workman was given full opportunity of participation and principles of natural justice have been adhered to the hilt while recording the enquiry proceedings. The report of the Enquiry Officer is also detailed one running into nine footscap typed pages in which evidence recorded has been very ably appraised by the Enquiry Officer. Furthermore the Industrial Tribunal, Faridabad while according approval for dismissal of the workman on the application filed by the management under section 33-2(b) has also upheld the validity of the enquiry report. The order of the learned Tribunal copy of which is, Exhibit M-31 is speaking order in which rival contentions have been ably discussed and analysed. So, in my opinion, the domestic enquiry held was valid and proper and the Enquiry Officer while conducting the same did not flout any principles of natural justice and so, this issue is answered in favour of the management.

ISSUE NO. 2:

9. The learned Authorised Representative of the workman Shri Raghbir Singh contended that in case, domestic enquiry is held to be valid and proper order of dismissal passed by the management on the basis of the same is defective and the same contravenes the provisions of clause 15(6) of the Standing Orders applicable upon the respondent mill. In the order of dismissal, Exhibit M-30 there is no mention that the previous record of the workman was taken into consideration while passing the order of dismissal, which the management was bound to do under the said clause. In that behalf Shri Raghbir Singh has cited 1974 II LLJ, page 184, between Borosil Glass Works Ltd. and M. G. Chitable and Richard M.D' Souza. To meet this situation, learned Authorised Representative of the respondent contended that the previous record of the workman was before the Enquiry Officer, who held the domestic enquiry and the same was taken into consideration by

him while making his report. In my opinion, even if, any evidence was produced by the management regarding previous work and conduct of the workman, the same was beyond the scope of the duties entrusted to the Enquiry Officer, who could not have travelled beyond the enquiry into the charges, regarding which, charge-sheet was issued to the workman. Such an application of mind regarding previous record of the workman was to be made by the management at the time of passing the final order of termination. In the said order, Exhibit M-30 there is no mention that the authority passing the order had taken into consideration the previous record of the workman while awarding him extreme punishment of dismissal. So, on this ground the order of dismissal has to be set aside.

10. Another point urged on behalf of the workman was that even if, the workman has been guilty of indulging in abusive language towards Shri N. S. Mehta, even then, this single lapse on his part should not be made a ground to visit the extreme penalty of dismissal. In that behalf, he has cited 1984 (64) *Indian Factories Journal* 433 between *Ved Parkash Gupta v. Delton Cables India Pvt. Ltd.* In the authority under reference the abuse hurled by the workman when rendered into simple English would read "I fuck the mother of Durg Singh bring him".

11. In the present case the abuse any attributed to the workman reads as under:—

"YE MILL CHUTIA MALIKON KE
HATH MAIN HE. ISKO BECH
DALO AURKOI DUSRA AKAR
ADVANCE BAINTAGA".

So, the abuse allegedly hurled by the workman was absolutely innocuous as compared to the abuse directed by the workman towards the officer of the management in the authority under reference. Their Lordships in the authority referred to above held that simply because the workman used abusive language towards the officer of the management is no ground to award him the extreme penalty of dismissal which was glaringly disproportionate to his misconduct. So, on this ground also, order of dismissal passed against the workman calls for interference by this Court under section 11-A of the said Act.

12. So, in the light of my aforesaid observations, the workman is ordered to be reinstated with continuity of service and full back wages from 17th July, 1974 onwards. Wages from the date of dismissal cannot be awarded to the workman, because he raised the demand notice after about more than two years of his dis-

missal. After his dismissal on 6th March, 1972 the management applied to the Industrial Tribunal, Haryana for approval of the dismissal order, which was given on 11th March, 1974. Thereafter, the workman raised the demand notice on 17th July, 1974, which was rejected by the Government of Haryana on 6th November, 1974. So, the workman filed Writ Petition against this order of rejection in the Hon'ble High Court of Punjab and Haryana and the Hon'ble High Court,—*vide* its judgement, dated 26th October, 1982 directed the Government of Haryana to refer the dispute to the Labour Court. So, delay in proceedings cannot be attributed to the workman at all. So, the workman is ordered to be reinstated with continuity of service and wages from 17th July, 1974 till the date of his reinstatement. The reference is answered and returned accordingly. There is no order as to cost.

The 9th December, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 8-83/1926, dated 11th December, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab./10947.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. Ram Dass Barkat Ram, B-37, MIE, Industrial Area, Bahadurgarh:—

BEFORE SHRI B. P. JINDAL,
PRESIDING OFFICER,
LABOUR COURT, ROHTAK
Reference No. 236 of 84

between

SHRI GOPAL JI PARSHAD, WORKMAN AND
THE MANAGEMENT OF M/S. RAM DASS
BARKAT RAM, B-37, MIE, INDUSTRIAL
AREA, BAHADURGARH

Shri Chander Singh, A.R. for the workman.
Shri M. M. Kaushal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Gopal Ji Parshad and the management of M/s. Ram Dass Barkat Ram, B-37, MIE, Industrial Area, Bahadurgarh, to this Court, for adjudication,—vide Haryana Government Gazette, Notification No. 38211—16, dated 16th October, 1984:—

Whether the termination of services of Shri Gopal Ji Parshad is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Dye-maker on monthly wages of Rs. 690 for the last about two years three months and that the respondent choose to terminate his services in an illegal and arbitrary manner on 6th June, 1984 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Hence he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the petitioner started absenting from his employment of his own and thereby abandoned the same and as such, the reference is bad in law. *Inter alia*, it is alleged that in the demand notice, dated 6th June, 1984, the petitioner has alleged that his services were terminated on the said date whereas the management issued him registered notice on 12th June, 1984 desiring him to resume his duties but the petitioner never joined the same. On merits also, reply runs on the same lines, though, it is alleged that the petitioner started absenting from his duties, with effect from the afternoon of 6th June, 1984, on which date he applied for leave which was declined, but the petitioner of his own proceeded on leave. Additional pleas projected are that after abandonment of his employment, the petitioner remained gainfully employed.

4. On the pleadings of the parties, the following issues were settled for decision on 27th February, 1985:—

- (1) Whether the reference is bad in law? OPR.
- (2) Whether the claimant abandoned his employment of his own?
- (3) Whether the workman remained gainfully employed after his alleged termination? OPR.
- (4) Whether the termination of services of Shri Gopal Ji Parshad is justified and in order? If not, to what relief is he entitled?

5. Both the parties were allowed to produce their evidence. The petitioner appeared as his own witness as WW-1 and examined WW-2 Shri Raj Kumar, Steno-typist, office of the Labour Officer, Rohtak. The management examined MW-1 Shri Arvind Bhasin, its Manager.

6. Learned Authorised Representatives of the parties heard.

ISSUE NO. 1:

7. The learned Authorised Representatives of the respondent Shri Kaushal contended that this reference is bad in law, because the controversy before the Court which has been unfolded during the course of trial of the reference is absolutely alien to the terms of reference, which are confined to the justifiability or otherwise of the alleged termination of the petitioner, which was never done by the respondent, because the petitioner of his own started absenting from his duties with effect from the afternoon of 6th June, 1984. So, he alleged that it is a case simpliciter of abandonment of employment by the petitioner and that the Labour Court cannot travel beyond the terms of reference, which as already observed are confined to the justifiability or otherwise of the alleged termination of the petitioner. In that behalf he has referred to 1984 (II) LLN 297, *Sita Ram Vishnu Shirodkar and Administrator, Government of Goa and others*. A reading of the Bombay authority referred to above it is not revealed as to what was the stand of the respondent-management during conciliation proceedings, but in the present case, the respondent has placed upon the file a resume of the proceedings before the Labour-cum-Conciliation Officer, Rohtak, copy of the same is Exhibit M-7. Before him also the case of the respondent was that the petitioner has abandoned his employment of his own and

423
in spite of notice given to him to resume his duties, the petitioner did not do so. So, the Bombay High Court authority referred to above applies with full force to the facts of the present case.

8. A reference can be made with advantage to another authority of the Hon'ble High Court of Rajasthan reported in 1985 Lab. I.C. 480 *Rajasthan State Road Transport Corporation and others v. The Judge, Industrial Tribunal, Rajasthan, Jaipur and others.* In this authority also his Lordship held that a Labour Court or Tribunal has to confine its findings within four parameters of the terms of reference and that such Court or Tribunal cannot travel beyond the same.

9. On the other hand, the learned Authorised Representative of the workman Shri Chander Singh contended that the workman was not allowed to join his duties on 6th June, 1984 and in that manner the management forced him out of employment and the workman has been very prompt in raising the demand notice on that very date. He further contended that had the management been sincere in taking back the petitioner in employment, it could have offered to do so during conciliation proceedings. Contention though tempting, is devoid of any force, because the law on the point has been clinched by the Hon'ble High Court of Bombay authority referred to above. If there has been any lapse, it has been on the part of the Labour Department which made reference to this Court without applying its mind to the actual controversy between the parties. So, there is no difficulty in holding that the present reference is bad in law and as such, this issue is answered against the workman.

ISSUES NO. 2, 3 & 4:

10. Since issue No. 1 has gone against the petitioner, these issues need not be gone into by this Court.

11. In the light of my foregoing discussion this reference is held to be bad in law and answered accordingly with no orders as to cost.

The 28th November, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Bhiwani.
Rohtak.

Endorsement No. 236-84/1931, dated 11th December, 1985.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Bhiwani.
Rohtak.

The 16th January, 1986

No. 9/5/84-6 Lab./11300.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the Workman and the management of M/s Maharaja Aggarsain College, Jagadhri:—

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 62 of 1984.

SHRI EKRAM BHAGAT, WORKMAN AND THE MANAGEMENT OF THE MESSRS MAHARAJA AGGARSAIN COLLEGE, JAGADHARI.

Present:

Shri Inder Sain Bansal, for the workman.

Shri S. Bindra, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred dispute between Shri Ekram Bhagat workman and the management of the Messers Maharaja Aggarsain College, Jagadhri to this Court. The terms of the reference are as under :

Whether the termination of service of Shri Ekram Bhagat, workman was justified and in order to ? If not, to what relief is he entitled?

Shri Ekram Bhagat workman in his demand notice dated 8th February, 1984 has alleged that he had been serving the respondent management for the last ten years as a Gardner. He further

alleged that he had been serving the management to its entire satisfaction but on 23rd December, 1983 his services were terminated in utter dis-regard to section 25(F) of the Industrial Disputes Act, 1947. He has prayed for his reinstatement with continuity in service and with full back wages.

Management contested the reference and contended that the respondent being an educational institution is not covered under the definition of industry. Workman Ekram Bhagat was employed as a Gardner but he habitually remained absent from duty and never obeyed the management inspite of, verbal warnings and advices. In October, 1983, November 1983 and December, 1983 workman started absenting himself from his duties. He also mis-behaved with the college staff and management. A show cause notice dated 24th December, 1983 was issued and served upon the workman. Ekram Bhagat submitted his reply which was found most un-satisfactory and thereafter Shri Ekram Bhagat voluntarily abandoned his job. It was further contended that workman was neither retrenched nor terminated in fact he has abandoned his services.

Shri Ekram Bhagat filed re-joinder refuted the assertions made by the management.

On the pleadings of the parties the followings issues were framed:—

I have heard Shri Inder Sain Bansal assisted by Shri Madhu Sudan authorised representative for the workman and Shri S. Bindra for the management and have also gone through the evidence available on the file. After affording thoughtful consideration to the whole matter my issue-wise findings are as under:—

Issue No. 1:

Before switching on discussions in details on this issue it would be beneficial to mention here that scope for delivering award can be narrowed down as under.

Case of the workman is that his services were terminated in violation of section 25(F) of the Industrial Disputes Act, 1947 while the case of management is that workman has abandoned service of the respondent, while the reference is otherwise in other words whether the termination order of services of workman is justified if not what relief is he entitled.

In support of management Shri Hemant Kumar appeared as MW-1. He deposed that in October, 1983 workman remained absent for 5 days, in November and December he absented for 6 days each and after 24th December, 1983 workman never reported on duty. On 24th December, 1984 a Showcause Notice Exhibit M-1 was served upon the workman. Reply of workman of show cause notice is Exhibit M-2.

Shri Jai Parkash Garg appeared as MW-2. He stated that show cause notice was issued to workman under his signatures.

Ekram Bhagat appeared as MW-2. He stated that his services were terminated by the respondent on 23rd December, 1983 without making payment of any pay in lieu of notice period nor retrenchment compensation was paid to him.

AW-1 is Shri Jaswant Singh. He stated that Ekram Bhagat used to reside in a room which was situated in college premises and one day he saw that the college authorities had thrown the belongings of workman and locked his room. in view of the above evidence I would like to re-produce certain words of reply of the workman of show cause notice which was served upon him by the management. It reveals as under:

आप को पता होना चाहिए कि मैं माली हूँ और मेरी ऐसी कोई इच्छा नहीं कि मैं आपकी स्टाफ के साथ सुवह के समय हाजिर रहा करूँ। मैं अपना काम किसी भी समय कर सकता हूँ क्योंकि मुझे और भी कई लोगों की बगीचों का काम करना होता है। मैं सिरक आपकी नौकरी के ऊपर अपना गुजारा नहीं कर सकता। यदि आप ने काम करवाना हो तो मैं अपनी मरजी के मुताबिक जैसा मेरे पास वक्त होगा शाकर कर दिया करूँगा। यदि मैं कभी भी गैरहाजिर भी हूँ तो उस का कालेज पर कोई फर्क नहीं पड़ता।

It is admitted fact on the file that the workman was in service of the respondent for more than 240 days.

Vide my order dated 26th April, 1985 I have specifically given findings that respondent management even being educational institution comes in the definition of industry that findings was never challenged by the management.

It is admitted fact that management did not issue any notice for terminating service of workman nor any pay towards notice period and nor any retrenchment compensation was paid to workman. The reason is very obvious from the reply of show-cause notice of Ekram Bhagat dated 24th December, 1983. The language of this reply makes the whole position of this dispute clear that the stand of the management that workman has abandoned his services is justified. The workman in fact is dis-obedient, irregular and did not perform his duties to the satisfaction of the management and he absented from his duty, in other words he voluntarily left his job. When the workman appeared in witness box he did not refute his reply, dated 24th December, 1983 nor he volunteered to make a statement to join his duty with the undertaking that he will work to the satisfaction of the management which clearly shows that the workman is not at all interested to join the service of management.

Where there is a case of abandonment of service the management is not bound to issue any notice or make payment of any retrenchment allowance.

In view of my above discussion I reach at the conclusion that the case in hand neither the workman was retrenched nor his services were terminated but in fact the workman has abandoned his job so this issue is decided accordingly.

RELIEF:

In view of my findings on issue No. 1 I pass my award regarding the dispute in question accordingly.

V. P. CHAUDHARY

Dated : 20th November, 1985.

Presiding Officer,
Labour Court, Ambala.

Endorsement No. 3014, dated 5th December, 1985.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY

Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-6 Lab./11301.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workmen and the management of M/s. Indira Gandhi Mahila Maha Vidyalaya, Kaithal:—

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA.

Reference No. 165 of 1984.

(Old No. 51 of 1982)

SHT. SHANTI DEVI, WORKMAN AND THE MANAGEMENT OF THE MESSRS INDIRA GANDHI MAHILA MAHA VIDYALAYA KAITHAL.

Present :

Shri Madhu Sudan, for the workman.

Shri S. Kaushal, for the respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of the powers conferred,—vide clause (C) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Smt. Shanti Devi work woman and the management of the Messrs Indira Gandhi Mahila Maha Vidyalaya, Kaithal, to Labour Court, Faridabad. The terms of the reference are as under:—

“Whether the termination of services of Smt. Shanti Devi was justified and in order? If not to what relief is she entitled to ?”

In April 1984, Labour Court was constituted at Ambala so this reference was received by transfer.

Smt. Shanti Devi alleged that she was appointed as a Peon by the management of R. K. S. D. College Kaithal on a permanent post on 9th August, 1961. She remained in the service of R. K. S. D. College, until 19th July, 1970 and thereafter she was transferred on 20th July, 1970 to Indira Gandhi Mahila Maha Vidyalaya as a peon. She had been working since 20th July, 1970 in the service of respondent management and had been discharging her duties to the satisfaction of the management. But on 22nd April, 1980 her services were terminated with immediate effect, in other words while issuing 24 hours notice to her. This said termination order is in utter violation of section 25(F) of the Industrial Disputes Act, 1947. So it was prayed that this termination order may be declared null and void and not binding upon the applicant.

Respondent-management was served. It has contested the dispute while contending that first of all the respondent-management is an educational institution. So it is not covered in the definition of Industry, so the Labour Court has got no jurisdiction to try this controversy. Secondly, it was urged that in this case services of Smt. Shanti Devi were never terminated but in fact she was retired on reaching the age of her superannuation. It was further contended that Smt. Shanti Devi was asked to get herself medico legally examined from C.M.O. Kurukshetra but she failed to do so. Since she had become too old and was unable to perform her duties she was retired. Since this case is not covered in the under definition of Industry, so compliance of provisions of section 25 (F) was not at all obligatory on the part of the management, so this reference be dismissed. Shrimati Shanti Devi filed replication through that she controverted the allegations of the management mentioned in the written statement.

On the pleadings of the parties the following issues were framed for the just decision of this case.

I have heard Shri Madhu Sudan authorised representative of work woman and Shri Surinder Kaushal for respondent-management and have gone through the evidence present on the file. After affording thoughtful consideration to the whole matter, my issue-wise findings are as under:—

Issue No. 1 :

Case of the management is that the dispute is not covered under the Industrial Disputes Act, 1947 because respondent-management is a educational institution, so it is not covered under the definition of Industry. However, it was refuted by authorised representative of work-woman.

I do not agree with the contentions put forward by Shri S. Kaushal, authorised representative of respondent-management and of the view that the educational institution is also covered under the definition of Industry. So the dispute in hand is covered under the Industrial Disputes Act, 1947. I am fortified by judicial pronouncement.

1978 Supreme Court L.J.: page 481 at page 521 title the Bangalore water supply and sewerage board etc. Vs. Rajappa and others etc. Accordingly I hold that the respondent-management is covered under the definition of Industry. So this Court has got jurisdiction to try this dispute. Accordingly, this issue is decided in favour of, work woman against the respondent-management.

Issue No. 2 :

This is most crucial issue which will decide the destiny of the controversy between the parties. In a nut shell I would like to again mention here that the case of the management is that Smt. Shanti Devi had become too old that it was not possible for her to perform her duties. She failed to produce a certificate from C.M.O., Kurukshetra about her age and medical fitness so she was retired.

On the other hand the defence of Smt. Shanti Devi is that she was referred firstly for her medical examination regarding her age to S.M.O. Kaithal. She got herself medico legally examined and obtained a certificate of fitness which she submitted to the respondent-management but it was not believed. She was never given any letter and direction to go to C.M.O. Kurukshetra and got herself medico legally examined.

Shrimati Shanti Devi has appeared in the witness box and has supported her claim mentioned in her statement of claim. On the other hand the management has examined Shri B. P. Bansal as MW-1 Shri Subhash Bindra as MW-2. They have supported the case of the management but MW-3 Shri Som Nath Mohr office of Election office Government of Haryana Chandigarh, deposed that according to census published in 1970, age of Smt. Shanti Devi had been shown 40 years and according to census in 1979 which was published in 1980 her age has been mentioned as 45 years. So this evidence of the management itself gone against it.

The reading of the termination letter makes the position further clear which reads that the management of Indira Gandhi Mahila Maha Vidyalaya, Kaithal has directed to say that your services in the College are no longer required. So letter should be taken as 24 hours notice and you should consider yourself relieved with effect from the 22nd April, 1980 afternoon. You will be paid salary in lieu of notice as a under rules.

The wording of above letter to which the management has claimed that it is a retirement letter it no where discloses that Shrimati Shanti Devi by means of failing to produce her age certificate or having reached at the age of superannuation she stands retired. In other words it amounts to termination of her services when it has mentioned that you will be paid salary in lieu of the notice as admissible under the rules.

Moreover in the case in hand first of all Smt. Shanti Devi was referred to S.M.O. Civil Hospital, Kaithal, who declared Shrimati Shanti Devi fit to discharge her official duties. If the management wanted to get her re-examined from C.M.O. Kurukshetra in these circumstances it was duty bound to have given a letter to the applicant coupled with T.A. & D.A. as well as fees of medical examination etc. but it failed to do so.

Since the order Exhibit A-1 amounts to termination of services of Smt. Shanti Devi so the pay of notice period, in other words one month pay as well as retrenchment compensation allowance must have been paid along with the termination letter and appropriate authority (Government of Haryana) should have been informed forth with. It has been observed that even one day delay in making payment of pay in lieu of notice period and retrenchment compensation amounts to violation of section 25 (F). In these circumstances the workman or work-woman is entitled to the relief under the Industrial Disputes Act, 1947.

In other words I am of the view when the provisions of section 25(F) have been violated by the respondent-management so the workwoman Shrimati Shanti Devi is entitled to the relief of reinstatement with continuity in service and with full back wages. So this issue is decided in favour workwoman against the management.

I pass my award regarding the dispute in hand accordingly.

I would like to issue necessary direction to the workwoman Shrimati Shanti Devi that she shall report for duty along with her medical certificate regarding her age and fitness from C.M.O., Kurukshetra.

Dated : 25th November, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 3017, dated 5th December, 1985.

Forwarded (Four Copies), to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

The 22nd January, 1986

No. 9/7/86-6 Lab./159.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Hindustan Everest Tools Ltd., Jatheri (Sonepat).

BEFORE SHRI B. P. JINDAL, PRESIDING
OFFICER, LABOUR COURT, ROHTAK

Reference No. 60 of 1982

between

SHRI HARI CHAND, WORKMAN AND THE
MANAGEMENT OF M/S. HINDUSTAN EVER-
EST TOOLS LTD. JATHERI (SONEPAT).
SHRI R. K. SEHGAL, A.R., for the workman.
Shri C. M. LAL, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the

Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Hari Chand and the management of M/s Hindustan Everest Tools Ltd., Jatheri (Sonepat), to this Court for adjudication,—vide Haryana Government Gazette Notification No. ID/SPT/25/82/18468, dated 16th April, 1982 :—

Whether the dismissal of Shri Hari Chand was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. As per averments made by the applicant in the amended Claim Statement filed in the Court on 16th January, 1985, his case is that he was not given a copy of the complaint along with the charge-sheet, nor he was furnished a list of witnesses by the management and that he was not paid suspension allowance during the period of suspension and that Shri Vinod Goswami, Manager Tools and Research and Development of the respondent concern was not competent to place the petitioner under suspension or issue charge-sheet and so, the enquiry proceedings conducted are null and void. There is no averment in the Claim Statement when the petitioner was 'appointed' or dismissed from employment.

3. In the reply filed by the respondent to the amended claim petition, it is admitted that the reference is bad in law and without jurisdiction, because the appropriate Government which referred the dispute to the Court for adjudication did not frame the terms of reference correctly and that the Claim Statement has not been verified by the petitioner. On merits, it is alleged that whatever documents were asked for by the petitioner during the course of domestic probe were supplied to him and he was given full opportunity of participation in the same. Furthermore his representative was allowed to inspect the enquiry file and prepare the copies of the documents and so, it is alleged that the enquiry was within four corners of the principles of natural justice. It is asserted that the suspension order and charge-sheet were issued by the officer competent to do so. In the alternative, it is pleaded that the Factory Manager had accepted and approved charge-sheet issued to the petitioner and that the petitioner did not take any objection regarding the charge-sheet being not issued by the officer authorised to do so during the enquiry proceedings and as such his objection in that behalf is an afterthought and

that after receipt of the enquiry report, the management fully applied its mind and concurring with the findings of the Enquiry Officer passed the order of dismissal. *Inter alia*, it is alleged that the past record of the petitioner has not been blemishless as he had been given warnings for numerous occasions for various acts of omission and commission. It is also pleaded that that the workman remained gainfully employed after his termination.

4. In the rejoinder filed by the petitioner, various pleas taken on behalf of the respondent have been controverted.

5. On the pleadings of the parties, the following issues were framed by my learned predecessor on 20th January, 1983 :—

- (1) Whether the reference is bad in law as per the preliminary objection ?
- (2) Whether the enquiry conducted by the management is fair and proper ? If so, to what effect ?
- (3) Whether the dismissal of Shri Hari Chand was justified and in order ? If not, to what relief is he entitled ?

6. He further rejected the prayer of the respondent to try issue No. 2 regarding domestic enquiry as preliminary issue. However, the said prayer was accepted by me after hearing the Authorised Representatives of the parties,—*vide* my order, dated 16th October, 1985. So, under the circumstances, I am seized of decision of issue No. 2 regarding domestic enquiry only, in which the petitioner himself appeared as WW-1 and the management examined MW-1 Shri Surinder Kaushal, Enquiry Officer and Labour Law Consultant, MW-2 Shri R. K. Dikshit, Personnel Officer of the respondent concern.

7. Learned Authorised Representatives of the parties heard. Documents perused.

Issue No. 2

8. To prove the validity of the enquiry, the management examined Shri S. Kaushal, Enquiry Officer (incidentally Labour Law Consultant known to the Court, as he has been appearing in this Court too often), who stated that he was appointed Enquiry Officer to conduct a probe into the allegations against the workman, copy of the charge-sheet is Ex. MW 1/2 and reply filed by the workman Ex. MW-1/3. Thereafter he issued notices to the parties MW-1/4 to MW-1/6

and both the parties appeared before him, photo copy of the enquiry proceedings is Ex. MW-1/7 (pages 49 to 88) and that the entire proceedings are in his hand and besides the workman who has been attending the proceedings, he allowed Shri Ram Karan his Authorised Representative to appear in the proceedings. He further stated that he recorded the statement of the witnesses of the management on 21st February, 1981 and 5th March, 1981 in the presence of the workman and his representative and that on 5th March, 1981 when he recorded the statement of the workman, he made a statement that Shri Mohan Singh Rawat a witness of the management be recalled for cross-examination and that though there was no justification for the same, he still recalled Shri Rawat for being cross-examined again and that the documents produced during the enquiry are Ex. MW-1/8 (pages 88 to 105) and before him the management produced a copy of the Certified Standing Orders applicable upon the respondent company and that thereafter he submitted his enquiry report Ex. MW-1/10 and that both the parties were given full opportunity of participation and cross-examination of rival witnesses. MW-2 Shri R. K. Dikshit stated that Shri V. N. Mathur was the Manager of the factory in the year 1981, who ordered for enquiry against the workman,—*vide* his endorsement on Exhibit MW-1/3 at point "A".

9. On the other hand, the workman appeared as WW-1 and stated that he was working in the department of Grinding and Polishing and that on 29th January, 1981 at 1.20 p.m. Shri Kanwar Singh and Shri Hukam Singh entered the factory premises for getting signatures of the workman and were also asking the workers to pay contribution to the union funds and that the said union was affiliated to CITU and that he, Suresh and Partap Ram were working in the factory. In a group and that Partap called Suresh to pay the contribution but he tried to restrain him from doing so, at which, Shri Partap abused him and that enquiry was held in the office of Shri Pant within factory premises and that Shri Kaushal was lawyer for the management again said Shri Pant was presenting Officer for the management and that whatever papers were asked for by him were furnished by the Enquiry Officer.

10. The learned Authorised Representative for the workman Shri Hari Chand assailed the validity of the enquiry proceedings on the ground that the suspension order and charge-sheet were not signed by a competent officer of the respondent company and that the Enquiry Officer for

no good reasons disallowed the workman to be represented by a person of his choice and that the workman was not furnished a copy of the complaint or other documents sought to be relied upon by the management during the enquiry proceedings. The contention raised on behalf of the petitioner cannot be disposed of without reference to the Certified Standing Orders of the company. A copy of the same has been placed upon the file. The procedure for conducting the enquiry into major misdemeanours has been provided in clause 20 of the Certified Standing Orders. There is no provision in the same as to by which officer the charge-sheet should be signed, though it is provided that the enquiry shall be held by officer or officers appointed for the purpose. In the present case, charge-sheet has been signed by the Manager Tools Frame Research and Development. On behalf of the workman authority on the point cited was 1970 II LLJ page 222 between the workman employed in Ennore Foundry Limited and Manager of Ennore Foundry Ltd. In this authority it was held that the Labour Court should consider as to whether the appropriate Officer has issued the order of dismissal as prescribed under the Standing Orders. On the other hand, Shri Lal learned Authorised Representative of the management cited 1974(28) Indian Factories and Labour Reports page 80 between Crompton Greeves Ltd., Bombay and S. W. Shinde. In this authority it was held that where the charge-sheet issued by lower functionary of the company and on the basis of the charge-sheet the enquiry is ordered by the Manager, it can be safely presumed that the Officer signing the charge-sheet had implied authority of the Manager. In the authority cited on behalf of the workman, it was to be seen by the Court as to whether the order of dismissal has been passed by the appropriate officer prescribed the Standing Orders.

11. A grievance was made by the learned Authorised Representative of the workman that Shri Kaushal Enquiry Officer for no lawful reasons disallowed the workman to be represented by one Shri Hari Chand, his name sake (Shri Hari Chand happens to be the Authorised Representative of the workman before this Court also) and so, principles of natural justice have been flouted. In that behalf, he cited 1983 (46) Indian Factories and Labour Reports 30 between Board of Trustees of the Port of Bombay and Dalip Kumar Nand Karm and others. In the authority under reference the management was being represented by a legally trained person and in that situation their Lordships of the Supreme Court held that the denial of such right to the

delinquent employee vitiates the principles of natural justice. In the present case this is not the position, because the management was being represented by an officer of the company Shri Pant during the enquiry proceedings. Furthermore the Enquiry Officer allowed a person of the choice of a workman as his Authorised Representative during the enquiry proceedings, who all through remained in association of the enquiry proceedings and has been signing the proceedings in proof thereof. So, on this ground also, the enquiry cannot be held to be vitiated.

12. It was further argued by Shri Hari Chand, Authorised Representative of the workman that non-furnishing a copy of the complaint and list of the witnesses vitiates the enquiry. There is a mention in the report of the Enquiry Officer that the workman was given full opportunity of examining the documents if any proposed to be produced by the management during the enquiry proceedings. In 1963 (I) LLJ, 49 it was held that the Court has to see as to whether the workman was not in know of the charges against him or the witnesses proposed to be examined. In case, he was know of the same, requirement of furnishing list of witnesses need not be complied with and the Court has to give a finding on the fact taking into consideration the facts and circumstances of each case. In the present case the factum of incident which took place on 29th January, 1981 is not denied by the petitioner. His version was that aggressor was Partap Singh and not he, because it was Partap Singh, who abused him and the workman has chosen to produce witnesses in defence also. So, on this ground also the enquiry cannot be held to be invalid and improper. The law is settled that domestic enquiry unlike a departmental enquiry is, generally conducted by a layman and so, domestic enquiries are not strictly governed by rules of evidence but substantive rules forming part of the rules of the natural justice cannot be ignored. In the present case, a perusal of the enquiry report would show that the Enquiry Officer Shri Kaushal not only discussed in detail statements of all the witnesses either of the management or of the workman but he has been rather over indulgent towards the petitioner in granting adjournment and even allowing cross-examination of a witness, who had already been cross-examined by the petitioner. He has discussed and appraised threadbare the statement of each witness and thereafter arrived at his own findings regarding culpability or otherwise of the petitioner. His enquiry report runs into ten foolscap typed pages and seems to be

handiwork of a judicially trained mind giving a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence adduced by the workman. The enquiry report is well-reasoned document and the learned Authorised Representative of the workman has been hardly able to make any inroads into the reasons given by the Enquiry Officer while arriving at the conclusion, which, he did. So, no umbrage can be taken regarding the procedure adopted by the Enquiry Officer or the reasonings given by him while arriving at the conclusion, finding the petitioner guilty of the mis-conduct, a charge-sheet regarding which was given to him. Another objection taken by the workman was that Shri Kaushal could not have been appointed as Enquiry Officer by the management in violation of the Standing Orders of the company. In that behalf, he made a pointed reference to clause 20 dealing with the procedure for probe into the mis-conduct. It is provided therein that the enquiry shall be held by an officer or officers appointed for the purpose. It is nowhere laid down that officer should be an employee of the respondent company. Appointing of Lawyers as Enquiry Officer, even those, who are sometimes engaged by the management has not been frowned upon by the Courts. It was so held in 1964 *II LLJ* 139 between *Saran Motors Private Ltd. and Vishwanath and another*. Another authority on the point referred was 1971 (4) Lab. I. C. page 1 M/s. Dalmia Dadri Cement Ltd. *versus* Marari Lal. The Courts have even held that management can appoint an independent person outside management activities to conduct a domestic enquiry into the charges against an employee and such appointment is not against law. Authority on the point referred was 1971 *Lab. I.C. Vol. 4* 1988 the *Management of Sri Sivaskthi Bus Service Kuri-chi Post South Arcot versus Gopal and another*.

12. So, the enquiry held in this case was valid and proper, within four corners of the principles of natural justice and in conducting the same the Enquiry Officer did not commit any act which would have caused any prejudice to the workman and so, this issue is answered in favour of the management.

13. The learned Authorised Representative of the parties had agreed that in case, the enquiry is held to be valid and proper, the Court may grant any relief to the workman under section 11-A of the Industrial Disputes Act, 1947. In that behalf, Shri R. K. Sehgal, Authorised Representative of the workman pleaded that the alleged mis-conduct regarding which, a probe was held by the management was the outcome

of union rivalry in the respondent company and since the petitioner was an active unionist he was punished for the same. I am not inclined to go with him on this point. The conduct of the petitioner in assaulting an employee of the factory inside the factory premises resulting in dislocation of a teeth and his further attempt to make further assault upon the injured employee at the dispensary, where he was taken for treatment will go to show that the petitioner is accustomed to use high handed methods against his co-workers in the factory premises. His act was subversive of discipline in the factory. If the employers are saddled again with such workers, that will lead to indiscipline and insubordination in the factory premises, which cannot be countenanced by this Court. So, no interference is called for by this Court under section 11-A of the Industrial Disputes Act, 1947. This also disposed of the issue regarding terms of reference, because, I find that the dismissal from employment of the petitioner was made after a lawful probe was conducted into the mis-conduct against the workman. Issue No. 1 was not pressed on behalf of the respondent. The reference is answered and returned accordingly with no orders as to cost.

Dated : 11th December, 1985.

B. P. JINDAL,

Presiding Officer,

Labour Court, Patiala.

Endorsement No. 60-82/8, dated 2nd January, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,

Labour Court, Rohtak.

No. 9/7/86-6 Lab./160.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of Haryana Roadways, Bhiwani,

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 210 of 82.

Between

SHRI AMAR SINGH, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS, BHIWANI.

Shri S. S. Gupta, A. R., for the workman.
Shri Vijay Vir Singh, A. R., for the management.

431
AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Amar Singh and the management of M/s. Haryana Roadways, Bhiwani, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/HSR/120/81/49457, dated 29th October, 1982 :—

Whether the termination of services of Shri Amar Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he remained employed with the respondent for the last 10 long years before his termination,—vide order dated 19th August, 1981 and that his services were terminated on the basis of false allegations after holding farce of an enquiry, in which, he was not given an opportunity of complete participation, so, he has claimed reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the management has lost confidence in the workman and since services of the workman were terminated after holding a valid and proper domestic enquiry, so the order of termination passed on the basis of the same is legally unassailable. It is further alleged that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and so this reference is bad in law.

4. On merits, it is alleged that the workman was found committing fraud of Government money amounting to Rs. 61-75 for which he was placed under suspension and a valid domestic enquiry was held by the Traffic Manager, in which, the workman was given full opportunity of participation. The Enquiry Officer found the charges fully proved and thereafter giving the workman final show cause notice and an opportunity of personal hearing, order of termination was passed. So, it is prayed that the reference be returned against the workman.

5. In the replication filed by the workman he has controverted the various pleas put forth

by the respondent and the parties entered upon the reference on the following issues framed on 3rd February, 1983:—

1. Whether the enquiry conducted by the management is fair and proper? OPM.
2. Whether the termination of service of Shri Amar Singh was justified and in order ? If not, to what relief is he entitled?
3. Whether the workman is covered under section 2 of the I.D. Act ?
6. The management examined MW-1 Shri J. S. Yadav, the then General Manager, Haryana Roadways, Bhiwani and MW-2 Shri C. L. Soni, the then Traffic Manager, Haryana Roadways, Bhiwani. The workman appeared as his own witness as WW-1.

7. The learned Authorised Representatives of the parties heard. Documents perused. My findings on the issues framed are as below:—

Issue No. 1

8. To prove this issue management examined Shri J. S. Yadav, the then General Manager, Haryana Roadways Bhiwani, who stated that the local flying squad Bhiwani reported a case of embezzlement of Rs. 61-75 against the petitioner. On this complaint he appointed Shri Soni Traffic Manager as Enquiry Officer, who submitted his report copy of which is Ex. MW-1/1. MW-3 Shri C. L. Soni, who conducted the enquiry stated that after the appointment of the Enquiry Officer he issued notices to the parties and that on the first hearing the workman did not appear and the enquiry was adjourned to 17th February, 1980, on which date, both the parties appeared and in their presence he recorded the statement of that Inspector and the workman was given full opportunity of cross examining him and he was given a date, for producing his defence, which the workman did not choose to avail of, though the workman undertook to produce the way bill within seven days, which he did not. Copies of the enquiry proceedings are Ex. MW-2/4. He further stated that he sent a memo to the workman Exhibit MW-2/5 reminding him of non submission of way bill and thereafter he gave his findings Exhibit MW-2/6. The workman appeared as his own witness as WW-1, and stated that along with the charge-sheet he was not given list of witness, nor any copy of the complaint and that

432

during the enquiry proceedings examination of the Inspector was being conducted by the Enquiry Officer and that he was not given an opportunity of cross examination and that questions were put to him by the Traffic Manager and that the Enquiry Officer asked him to produce the way bill which were supposed to be with the respondent roadways. Regarding checking of the bus he stated that in the year 1976 he was Conductor upon a bus bearing registration number 610 and that the said bus was bound for Bhiwani to Dehradun and that thirteen passengers had purchased tickets collectively retained by one passenger and that out of these passengers one of them got down near octroi post Dehradun, where checking of the bus was made by Inspector Baljeet Singh and Nafe Singh and twelve passengers were found travelling without tickets and that he had told the checking staff that the tickets were with one passenger, who had alighted near the octroi post and that the Inspector forcefully took unpunched tickets from him and that he had given the number of tickets upon the way-bill.

9. Beside oral evidence discussed above, I have also gone through the enquiry proceedings and the findings of the Enquiry Officer. Findings are absolutely cryptic. There is no discussion in the evidence produced during the enquiry by the Enquiry Officer. He has simply given a gist of the statement made by the Inspector Shri Baljeet Singh and thereafter concluded that the guilt against the workman stands proved. In 1985 LLN Vol. 27 page 579 between **Anil Kumar Mohan and Labour Court Jullundur City and others.** Their Lordships observed as under in para number five of the judgement:—

"It is well settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the enquiry officer has a duty to act judicially. The enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ips dixit of the enquiry officer. It has to be a speaking order in the sense that the conclusion is supported by reasons".

10. Viewed in the context of the observations quoted above, it can be safely held that the Enquiry Officer defaulted in the bounden duty to discuss and appraise the evidence produced during the enquiry proceedings. He had simply given a resume of the statement made by Shri Baljeet Singh and thereafter discussed the fact that the workman failed to produce the way bill within seven days as desired by him and so, he concluded that the charges against the workman stands established. There can no quarrel with the proposition of law that a disciplinary enquiry effects a livelihood and is likely to cast a stigma and therefore, it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of the evidence. But where the evidence is annexed to an order sheet and no co-relation is established between the two showing application of mind, it is not an enquiry report at all and any order of termination passed on the basis of such an enquiry report would be unsustainable. Furthermore, in the present case, the workman in his reply filed to the charge-sheet raised certain disputed points, which were neither gone into by the Enquiry Officer, nor the same were discussed by him in his report. Under these circumstances, there is no difficulty in holding that the enquiry in the present case was not held in accordance with the principles of natural justice and as such, the enquiry report is not held to be valid and proper.

11. In case the management reserves its right to adduce any evidence on merits regarding the allegations of mis-conduct against the workman, the Court is bound to give opportunity but in the present case, no such right has been reserved by the management and this Court *suo-moto* cannot grant any opportunity in that behalf to the management.

12. Since the enquiry report has not been held to be valid and proper, order of termination cannot stand.

(i) In the last the workman is ordered to be reinstated with continuity of service.

(ii) On the question of back wages also the workman cannot fail, because the order of termination is dated 19th August, 1981 and the demand notice received alongwith the order of reference is dated 28th August 1981. So, the same was raised within ten days of his unlawful termination. So, the workman shall be entitled to full back wages from the date of termination till the date of his reinstatement.

13. The third issue framed in this case is not happily worded, because there is no plea of the management that the petitioner is not a workman as defined in section 2(s) of the Industrial Disputes Act, 1947. The plea of the respondent was that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947. This plea was not pressed on behalf of the management. In view of the settled legal position that the respondent roadways is an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947. The reference is answered and returned accordingly with no order as to cost.

Dated: 18th December, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

Endorsement No. 210-82/9, dated 2nd January,
1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

No. 9/7/86-6 Lab./162.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana, is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the Workman and the management of Haryana Roadways, Bhiwani.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 33 of 83.

between

SHRI SATWAN, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS, BHIWANI.

Present:

Shri S. S. Gupta, A.R. for the workman.

Shri Vijay Vir Singh, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Satwan and the management of Haryana Roadways, Bhiwani, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. ID/BHN/110-82/18346—51, dated 19th April, 1983:—

Whether the termination of service of Shri Satwan was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Conductor in the month of August, 1976, but the respondent choose to terminate his services on the basis of trumped up charges, into which a farce of an enquiry was held. *Inter alia*, it is alleged that Inspector Shri Mahabir, who made a report against him was inimical towards him because of previous background of bad blood. He has further alleged that since no passenger was travelling without ticket on 5th April, 1981, when checking was done by Shri Mahabir, Inspector at Prem Nagar, he was assaulted by the Inspector and thereafter a false report of misappropriation of Government money to the tune of Rs. 10.80 was made by him. So, he has prayed for reinstatement with continuity of service and full back wages.

In the reply filed by the respondent, preliminary objections taken are that the management has since lost confidence in the workman, whose services were terminated after a proper domestic probe, in which, the workman was given full opportunity of participation and that the present reference is not maintainable. All other allegations made in the Claim Statement have been controverted. It is alleged that after proper domestic enquiry, charges against the workman were found fully proved and thereafter the punishing authority fully applied its mind to the facts of the case, passed the order of termination and as such, it is asserted that its validity is unassailable.

4. On the pleadings of the parties, the following issues were settled for decision on 5th September, 1984:—

(1) Whether a valid and proper domestic enquiry was held by the respondent? If not, to what effect? OPR.

434

(2) Whether the management has lost confidence in the workman? OPR

(3) Whether the termination of services of Shri Satwan was justified and in order? If not, to what relief is he entitled?

5. Both the parties were allowed to produce their evidence. The management examined Shri J. S. Yadav, the then General Manager, Haryana Roadways, Bhiwani Depot as MW-1 and Shri J. L. Bhaskar, Traffic Manager, as MW-2. The workman appeared as his own witness as WW-1.

6. Learned Authorised Representatives of the parties heard. My findings on the issues framed are as below:—

ISSUE NO. 1:

7. This issue regarding domestic enquiry was answered in favour of the management, because on 15th October, 1985, when the case was fixed for arguments on this issue, the learned Authorised Representative of the workman Shri S. S. Gupta made a statement in the Court that he has nothing to argue on this issue. So, enquiry held in his case was valid and proper.

ISSUES NOS. 2 AND 3:

8. Those issues being akin in nature have been clubbed together for decision. The learned Authorised Representative for the workman contended that for a single lapse on the part of the workman he should not have been awarded the harshest punishment of termination, because the same is glaringly dis-proportionate in relation to his alleged proved mis-conduct of mis-appropriation of Government money. He contended that employment opportunities in India are very scarce and as such, interference by this Court under section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) is called for. In many earlier cases of this nature, this Court has been interfering under section 11-A of the said Act and ordering reinstatement of the workman on compassionate ground holding that the punishment awarded to the workman was glaringly dis-proportionate to their alleged proven mis-conduct. But, now, on behalf of the management, my attention has been drawn to 1984 (3) SLR 514 *State of Punjab versus Surat Singh and another*, an authority handed out by Hon'ble Mr. Justice M. M. Punchhi of the Hon'ble High Court of Punjab and Haryana, in which, his Lordship has observed that in case of misappropriation of Government money by Conductors of the State Transport, reinstatement shall

not be ordered and the Court shall explore the possibility of alternative employment for the workman. While giving this decision his Lordship placed reliance upon Full Bench authority of Gujarat High Court in *Gujrat State Road Transport Corporation Ahmedabad versus Jamna Dass Becharbhai* reported in 1983 Lab. I.C. 1349. The crux of the law laid down in this authority was that the Conductors of the State Transport indulging in pocketing the fare and robbing the national Ex-chequer should not be allowed to nibble at the State Ex-chequer again by ordering their reinstatement. Under these circumstances, his Lordship directed the Labour Court to re-decide the question regarding the relief to the workman. As already observed that the workman has not challenged the validity of the enquiry report. So, in a way he has admitted that he was guilty of mis-appropriating Government money. Furthermore, previous service record of the workman is full of gaping holes, because the management has placed on record copies of the five orders of punishment awarded to him in the last three-four years. Vide Ex. MW-3/1 a copy of the order dated 10th October, 1977, the punishing authority on the allegations of fraud against the workman ordered for the stoppage of six increments with commulative effect. Vide order dated 14th October, 1977, copy of which, Ex. MW-3/2 the punishing authority ordered for suspension because of a report of mis-appropriation against him. Similarly, —vide order dated 3rd February, 1982, copy of which Ex. MW-4/1 the workman was again placed under suspension on similar charges. Vide order Ex. MW-4/2 and Ex. MW-4/3 the punishing authority ordered for the stoppage of three increments of the workman with commulative effect. Charges for which these orders were passed also related for the embezzlement of Government money. Now, the question would be as to whether under these circumstances, any relief can be given to the workman or any interference is called for by this Court under section 11-A of the said Act. Had the workman been guilty of a single lapse, this Court would have ordered for the exploring of alternative avenues of employment for the workman in the respondent roadways, but in the present case the past service record of the workman is so shady that he does not deserve any lenient treatment from this Court.

9. After the issue regarding domestic enquiry has been conceded by the learned Authorised Representative of the workman, this case was posted for evidence of the parties on the remaining issues. The management was to produce

evidence regarding past service record of the workman. During this period Shri Vijay Vir Singh, Law Officer of the respondent roadways posted at Bhiwani came to this Court and brought to its notice that the workman had tried to approach him through somebody with illegal gratification not to produce any evidence regarding his previous service record. This exposure of the blasphemous conduct of the workman speaks volumes for the honesty of the Law Officer. The workman has been indulging in corrupt practices during the tenure of employment and he did not desist from doing so during the pendency of the trial of the reference. Under these circumstances, the management is fully justified in alleging that it has lost confidence in the workman. So, the workman is not entitled to any relief, because the order of termination was passed after a valid domestic probe was held, in which, allegations made against the workman were probed. So, no interference in the order of termination is called for. The reference is answered and returned accordingly. There is no order as to cost.

Dated the, 23rd December, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.
Camp Court, Hissar.

Endorsement No. 33-83/11, dated the
2nd January, 1986

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.
Camp Court, Hissar.

No. 9/7/86-6 Lab./163.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana, is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the Workman and the management of Administrator, Municipal Committee, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING
OFFICER, LABOUR COURT,
ROHTAK.

Reference No. 18 of 1985.

Between

SHRI DALIP SINGH, WORKMAN AND THE
MANAGEMENT OF ADMINISTRATOR,
MUNICIPAL COMMITTEE, ROHTAK.

Present:—

Shri H. R. Vats, A. R., for the workman.

Shri Ram Singh, Joshi, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Dalip Singh and the management of Administrator, Municipal Committee, Rohtak, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 6945.—50, dated 23rd February, 1985:—

Whether the termination of services of Shri Dalip Singh is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a peon since 10th March, 1971, against leave vacancy and from 12th January, 1977 to 24th November, 1982 on regular basis, but the respondent choose to terminate his services unlawfully just to accommodate its favourites, though the work and conduct of the workman all through has been satisfactory.

3. In the reply filed by the respondent, the claim of the petitioner has been controverted in as much as, it is alleged that the petitioner was employed on daily wages and not as a regular employee as alleged. It is further alleged that the petitioner never claimed re-instatement prior to 12th January, 1984, the date of which the demand notice was raised and so, the present claim is barred under section 33-C(i) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further alleged that since the services of all the employees of the Municipal Committee are governed by the Punjab Civil Services Rules, so, jurisdiction of this Court stand ousted. It is also alleged that the Labour Department of the Government of Haryana has also held that the respondent committee is not an "industry" as defined in section 2(j) of the said Act and so, it is alleged that the reference is bad in law.

4. On the pleadings of the parties, the following issues were settled for decision on 16th May, 1985:—

(1) Whether the reference is bad in law?
OPR.

435
 (2) Whether the termination of services of Shri Dalip Singh is justified and in order? If not, to what relief is he entitled?

5. In support of his claim, the petitioner appeared as his own witness as WW-1 and the management examined Shri Ram Singh Joshi, office Superintendent of the respondent committee as MW-1.

6. Learned Authorised Representative of the parties heard. My findings on the issues framed are as below:—

ISSUE No. 2:

7. The petitioner made a statement completely in corroboration of the averments made in the Claim Statement, so, I need not suffer repetition. He denied the suggestion that he remained employed on daily wages till his date of termination. Shri Ram Singh Joshi, MW-1 office Superintendent of the respondent committee stated that the petitioner was employed as a peon in the year 1977-78 against a leave vacancy in which capacity he served up to the year 1982 and thereafter the Deputy Commissioner made regular appointment of Shri Atma Ram and so, the services of the petitioner were dispensed with.

8. There is no denying the fact that the respondent committee did not comply with the mandatory provisions of section 25F of the said Act while terminating the services of the petitioner, because no notice pay or retrenchment compensation was paid to him, though the petitioner has actually worked for more than 240 days with the respondent during the last 12 calendar months from the date of his termination. This is evident even from the data furnished by the respondent in the Court on 26th November, 1985, that the petitioner has worked for 272 days with the respondent even from January, 1982 to November, 1982. While calculating 240 days the Court has to take into consideration last twelve calendar months from the date of termination. So, there is no escape from the conclusion that the petitioner has worked more than 240 days with the respondent during the last twelve calendar months from the date of his termination and as such, statutory provisions of section 25F are fully attracted in this case compliance of which was never made by the respondent and so, the order of termination passed was illegal and arbitrary and cannot be sustained.

ISSUE No. 1:

9. To buttress this plea, the respondent has drawn my attention to Annexure-C of the written statement, copy of the letter issued by the Labour Department, Government of Haryana that the Board of School Education, Haryana is not an "industry", because its employees are governed by the provisions of Punjab Civil Services Rules. Taking a cue from this letter, on behalf of the respondent it was contended that since the provisions of Punjab Civil Service Rules are applicable to the employees of the respondent committee, so, Industrial Disputes Act, 1947 will not apply. This contention is absolutely unfounded. In the Bangalore Water Supply and Sewerage Board case reported in 1978 Lab. I.C. 467 a seven Bench Judges of the Hon'ble Supreme Court of India dealt in detail about the scope, sweep and ambit of the term "industry" as defined in section 2(j) of the said Act. Their Lordships were endorsing the law laid down in Nagpur Municipality reported in AIR 1960 S.C., 675 observed in para 67 of the judgement as under:—

"Sri Justice Subba Rao, with uninhibited logic, chases this thought and reaches certain tests in Nagpur Municipality (AIR 1960 SC 675), speaking for a unanimous bench. We respectfully agree with much of his reasoning and proceed to deal with the decision. If the ruling were right, as we think it is, the riddle of "industry" is resolved in some measure. Although foreign decisions, word and phrases, lexical plenty and definitions from other legislations, were read before us to stress the necessity of direct co-operation between employer and employees in the essential product of the undertaking, of the need for the commercial motive, of services to the community, etc., as implied inarticulately in the concept of "industry", we bypass them as but marginally persuasive. The rulings of this Court, the language and scheme of the Act and the well-known canons of construction exert real pressure on our judgement. And, in this letter process, next to Banerji (AIR 1953 S.C. 58) comes Corporation of Nagpur (AIR 1960 S.C. 675) which spreads the canvas wide and illuminates the expression analogous to trade or business, although it comes a few days after Hospital Mazdoor Sabha (AIR 1960 SC 610) decided by the same bench."

10. These observations of the Supreme Court clinches the controversy in favour of the petitioner and there is no difficulty in holding that the respondent Municipality especially its administrative wing falls within the ambit of the term "industry" as defined in section 2(j) of the said Act and as such, the provisions of the Industrial Disputes Act, 1947 will apply in this case. So, this issue is answered against the management.

11. In the light of my fore-going discussion, there is no difficulty in holding that the order of termination passed against the workman was illegal, unlawful and arbitrary, which was passed in flagrant disregard of the provisions of section 25F of the said Act and as such, the same is set aside and since the demand notice was raised by the petitioner after a lapse of just more than one year of his termination, he cannot be deprived from the benefits of back wages, because the Courts have usually frowned upon references delayed for more than three years after termina-

tion. So, the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated the 24th December, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

Endorsement No. 18-85/12, dated the
2nd January, 1986.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

The 4th March, 1986

No. 9/7/86-6Lab./1137.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Jat Education Society, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT,
ROHTAK

Reference No. 182 of 83

between

SHRI RAJ KUMAR, WORKMAN AND THE MANAGEMENT OF
M/S. JAT EDUCATION SOCIETY, ROHTAK

Present :—

Shri R. S. Dhankar, A.R., for the workman.

Shri M. C. Bhardwaj, A. R., for the management.

AWARD

1. In exercise of powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Raj Kumar and the management of M/s. Jat Education Society, Rohtak to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 57668—73, dated 31st October, 1983:—

Whether the termination of services of Shri Raj Kumar is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was appointed as an Electrician with the respondent on 4th November, 1981 and his services were regularised from the date of his appointment on 28th March, 1982 but his services were terminated on 6th December, 1982 after lapse of more than one year of service, during which, no charge-sheet was issued to him and his work and conduct remained blemishless. So, he has prayed for reinstatement with continuity of service and full back wages.

33b
 3. In the reply filed by the management, preliminary objection taken is that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947. On merits, it is alleged that the petitioner was appointed on probation and his services were terminated as being no longer required. *Inter alia* it is alleged that the services of the petitioner were never regularised.

4. On the pleadings of the parties the following issues were settled for decision on 14th December, 1984 :—

- (1) Whether the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947?
- (2) Whether the termination of services of Shri Raj Kumar is justified and in order? If not, to what relief is he entitled?

4-A. In support of his claim, the petitioner appeared as WW-1 and the respondent examined MW-1 Shri Randhir Singh, Head Clerk.

5. Authorised Representatives of the parties heard. So, my findings on the issues framed are as under :—

Issue No. 2 :

6. Admittedly the petitioner has put in more than one year of continuous service with the respondent, because he was appointed on 4th November, 1985 and the respondent choose to terminate his services, as being no longer required on 6th December, 1982. There is no denying the fact that the respondent did not give any prior one month's notice or retrenchment compensation to the petitioner on the eve of terminating his service in flagrant disregard of the mandatory and solutory provisions of section 25F of the Industrial Disputes Act, 1947. It was so enjoined upon the respondent by the aforesaid provisions, because the petitioner has put in more than 240 days of actual work with the respondent during the last twelve calendar months from the date of his termination. Contrary to the plea taken by the respondent in the reply filed to the claim of the petitioner, the petitioner has placed on record a copy of the order Ex W-2,—*vide* which his services were regularised by the respondent on 28th March, 1982. Even if, this had not been done, even then, the respondent could not have dispensed with the services of the petitioner without complying with the provisions of section 25F of the Industrial Disputes Act, 1947, which, in this case, was never done by the respondent. So, the order of termination is absolutely illegal, arbitrary and un-sustainable in the eyes of law and as such, the same is set aside.

Issue No. 1 :

7. Shri M. C. Bhardwaj learned Authorised representative of the respondent was very lukewarm in pressing this issue in view of the categorically findings rendered by the Hon'ble Supreme Court of India in *Banglore Water Supply and Sewerage Board case reported in AIR 1978 page 548*. From the said judgement a reference can be made to para 124 to clinch the issue in favour of the petitioner.

In view of my aforesaid findings, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated the 31st December, 1985.

B. P. JINDAL,

Presiding Officer,

Labour Court, Rohtak.

Endstt. No. 182-83/125, dated the 27th January, 1986

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,

Labour Court, Rohtak.